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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION N
09/923,032	08/06/2001	Richard William Kubalek	15,454.1	8952
23556	7590	10/05/2004	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC.			KIDWELL, MICHELE M	
401 NORTH LAKE STREET			ART UNIT	PAPER NUMBER
NEENAH, WI 54956			3761	

DATE MAILED: 10/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/923,032

Applicant(s)

KUBALEK ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 28, 2004 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 6, 8 – 14 and 16 – 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Balzar et al. (US 6,293,932).

The applied reference has a common inventor and assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e)

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might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With reference to claims 1 and 16, Balzar et al. (hereinafter "Balzar") discloses a liquid absorbent device comprising a liquid impermeable outer cover having a central longitudinal axis, and including a top edge, a bottom edge, a first side edge and a second side edge, a first side section between the first side edge and the central longitudinal axis, and a second side section between the second side edge and the central longitudinal axis (36), a first frangible line in the first side section of the outer cover (64), and a second frangible line in the second side section of the outer cover (66), a liquid permeable liner (12) and an absorbent medium (16) joined with the outer cover to form a liquid absorbent device, at least the liquid absorbent medium being located between the first frangible line and the second frangible line (figure 2), the liquid absorbent device being folded so the outer cover forms the exterior of the folded liquid absorbent device (figure 8) such that, upon removal of portions of the outer cover outboard the frangible lines and unfolding the liquid absorbent device and use of the liquid absorbent device, a remaining portion of the outer cover forms a liquid impermeable layer of the liquid absorbent device that includes the liquid permeable liner and the absorbent medium as set forth in figure 12.

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As to claims 2 and 9, Balzar discloses a device further comprising a first joining element in the first side section, and a second joining element in the second side section (50) as set forth in col. 5, lines 57 – 61.

Regarding claim 3, Balzar discloses a device wherein the first joining element and the second joining element join respective portions of the folded outer cover together as set forth in col. 5, lines 40 – 46 and in figure 8.

With respect to claims 4 and 18, Balzar discloses a device wherein each frangible line is in generally overlapping alignment with itself as set forth in figure 5.

Regarding claims 5 and 19, Balzar discloses a device wherein the first frangible line is between the first joining element and the central longitudinal axis, and the second frangible line is between the second joining element and the central longitudinal axis as set forth in figure 5.

As to claims 6, 12 and 20, Balzar discloses a device further comprising a release strip (58) for the liquid absorbent device located on an exterior of the outer cover as set forth in col. 8, lines 37 – 52 and in figure 8.

With respect to claim 8, Balzar discloses a feminine sanitary protection device, comprising: a liquid impermeable outer cover having a central longitudinal axis, and including a top edge, a bottom edge, a first side edge and a second side edge, a first side section between the first side edge and the central longitudinal axis, and a second side section between the second side edge and the central longitudinal axis (36), means in the first side section (64) and in the second side section (66) for removing at least a portion of the first side section and at least a portion of the second side section

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from the outer cover, and a liquid permeable liner (12) and an absorbent medium (16) joined with the outer cover to form a liquid absorbent device, the liquid absorbent device being folded so the outer cover forms the exterior of the folded liquid absorbent device (figure 8) such that, upon removal of at least a portion of the first side section and at least a portion of the second side section from the outer cover and unfolding the liquid absorbent device, a remaining portion of the outer cover is adapted to form a liquid impermeable layer of the liquid absorbent device that includes the liquid permeable liner and the absorbent medium as set forth in figure 12.

With respect to claim 10, Balzar discloses a device wherein the liquid absorbent device with its outer cover is tri-folded as set forth in figure 8.

Regarding claim 11, Balzar discloses a device of claim 9 wherein the removing means (66) is between the joining means (50) as set forth in figure 5.

With reference to claims 13 and 14, Balzar discloses a device wherein the removing means includes a first frangible line in the first side section, and a second frangible line in the second side section wherein the frangible lines include perforations as set forth in col. 7, lines 19 – 26.

As to claim 17, see the rejection of claims 2 – 3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 7 – 8 and 15 – 16 are rejected under 35 U.S.C. 103(a) as obvious over Moder et al. (US 5,827,251).

With respect to claims 1, 8 and 16, Moder et al. (hereinafter "Moder") discloses a liquid absorbent device comprising a liquid impermeable outer cover having a central longitudinal axis, and including a top edge, a bottom edge, a first side edge and a second side edge, a first side section between the first side edge and the central longitudinal axis, and a second side section between the second the side edge and the central longitudinal axis (60), a first frangible line (or means for removing a portion) in the first side section of the outer cover, and a second frangible line in the second side section of the outer cover (col. 2, lines 49 – 50), a liquid permeable liner and an absorbent medium joined with the outer cover to form a liquid absorbent device (col. 11, lines 28 – 39), at least the liquid absorbent medium being located between the first frangible line and the second frangible line (figure 3), the liquid absorbent device being folded so the outer cover forms the exterior of the folded liquid absorbent device (figure 3) such that, upon removal of portions of the outer cover outboard the frangible lines and unfolding the liquid absorbent device and use of the liquid absorbent device, a remaining portion of the outer cover forms a liquid impermeable layer of the liquid absorbent device that includes the liquid permeable liner and the absorbent medium as set forth in figure 7.

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The difference between Moder and claims 1, 8 and 16 is the provision that the absorbent device comprises a second frangible line.

It would have been obvious to one of ordinary skill in the art to modify the absorbent device of Moder to provide a second frangible line since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.

Further, Moder states that at least one closed end can be perforated (i.e. frangible). Therefore, Moder recognizes the benefit of perforating the sealed ends to allow for ease of opening. Moder's statement that at least one end is perforated does not explicitly exclude the second end from being perforated and may include the second end as well.

As to claims 7 and 15, Moder discloses the device further comprising a vaginal insertion device as set forth in col. 2, lines 32 – 44.

Response to Arguments

Applicant's arguments filed July 28, 2004 have been fully considered but they are not persuasive.

Initially, the examiner notes that the statement at the top of page 2 of the response filed July 28, 2004 requests cancellation of claims 16 – 28 without prejudice to or disclaimer of the subject matter recited therein. However, claims 16 – 20 are presented as new claims in the amendment. For purposes of compact prosecution, the examiner has addressed claims 16 – 20 in the preceding rejection. However, clarification of the applicant's intent must accompany any response to this Office Action.

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In response to the applicant's argument that the Balzar and Moder reference fail to teach or suggest the presently claimed invention, the examiner disagrees. The applicant argues that the claimed invention recites an outer cover that has a dual role to function as a wrapper prior to use and then to function as a liquid impermeable layer or backsheet of the article during use. Both Balzar and Moder provide this claimed limitation. "Use" of the device may be considered as when the device is being removed from packaging. Both Balzar and Moder provide an over cover that forms a liquid impermeable layer in combination with the liner and the absorbent medium. The arguments seem to suggest that the outer cover is the backsheet. However, the applicant has already set forth a liquid impermeable outer cover and the outer cover is just an additional liquid impermeable layer identical to that disclosed by both Balzar and Moder.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Schwartz can be reached on 703-308-1412. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Michele Kidwell
Examiner
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